

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD

COURT OF APPEALS, DISTRICT OF COLUMBIA

APRIL TERM, 1931

No. 5396, SPECIAL CALENDAR

3

ANDREW W. MELLON, SECRETARY OF THE TREASURY,
APPELLANT

vs.

UNITED STATES OF AMERICA, EX REL. CHARLES C.
CARLIN, SR., CHARLES C. CARLIN, JR., AND M. CARTER
HALL, PARTNERS, TRADING AS CARLIN, CARLIN &
HALL, AND CHARLES C. CARLIN, TRUSTEE

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

FILED APRIL 28, 1931

COURT OF APPEALS, DISTRICT OF COLUMBIA

APRIL TERM, 1931

No. 5396

ANDREW W. MELLON, SECRETARY OF THE TREASURY,
APPELLANT

vs.

UNITED STATES OF AMERICA, *EX REL*, CHARLES C.
CARLIN, SR., CHARLES C. CARLIN, JR., AND M. CAR-
TER HALL, PARTNERS, TRADING AS CARLIN, CAR-
LIN & HALL, AND CHARLES C. CARLIN, TRUSTEE,
APPELLEES

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

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a Supreme Court of the District of Columbia

UNITED STATES OF AMERICA, *ex rel.* CHARLES C. Carlin, Sr., Charles C. Carlin, Jr., and M. Carter Hall, Partners trading as Carlin, Carlin & Hall, and Charles C. Carlin, Trustee, petitioners,

vs.

ANDREW W. MELLON, SECRETARY OF THE Treasury of the United States, respondent

At Law No. 79328

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia

UNITED STATES OF AMERICA *ex rel.* CHARLES C. Carlin, Sr., Charles C. Carlin, Jr., and M. Carter Hall, Partners trading as Carlin, Carlin & Hall, and Charles C. Carlin, Trustee, Munsey Building, Washington, D. C., petitioners

vs.

ANDREW W. MELLON, SECRETARY OF THE Treasury of the United States, Treasury Department, Washington, D. C., respondent

Filed Mar. 5, 1931
At Law No. 79328

Petition

To the Supreme Court of the District of Columbia:

The petition of the United States on the relation of Charles C. Carlin, sr., Charles C. Carlin, jr., and M. Carter Hall, and Charles C. Carlin, sr., trustee, respectfully represents:

I. That the petitioners, Charles C. Carlin, sr., Charles C. Carlin, jr., and M. Carter Hall, are residents and citizens of the State of Virginia, but in the several times hereinafter referred to were partners practicing law under the firm name of Carlin, Carlin & Hall, with offices in the Munsey Building, Washington, D. C., and bring this petition for a writ of mandamus against the respondent, Andrew W. Mellon, a citizen of the State of Pennsylvania residing in the District of Columbia.

II. That Andrew W. Mellon, respondent, was at the several times hereinafter referred to, and still is, Secretary of the Treasury of the United States, and is sued in his official capacity.

III. That on the twelfth day of April, 1925, Charles J. Harrah entered into an agreement in writing with the said law firm of Carlin, Carlin & Hall, composed of the petitioners, and with John A.

Beck, practicing law in the District of Columbia under the firm name of Wade & Beck, whereby the said Harrah retained
2 and employed the said law firms to prosecute his claims against the Republic of Cuba, before the President of the United States, the executive departments thereof, or any arbitral commission or tribunal which might have jurisdiction of said claim, and for the services of said law firms the said Harrah agreed to pay them, as a contingent fee, a sum equal to fifteen per cent (15%) of the gross amount that might be collected upon said claims by adjustment, compromise, settlement, arbitration, suit, judgment, legislation, or otherwise. Copy of said agreement is attached hereto, marked "Exhibit A" and is prayed to be read as a part of this petition. Acting under said contract and under a power of attorney simultaneously executed therewith, the said petitioners' law firm and its associate, the said John A. Beck, from the date of said agreement up until payment was made by the Republic of Cuba in the year 1930, as hereinafter shown, represented the said Charles J. Harrah before the State Department and the arbitral commission appointed by the Government of the United States and the Government of Cuba, and as a result of their professional services and efforts, there was paid into the Treasury of the United States by the Republic of Cuba in the month of July, 1930, in trust for the said Charles J. Harrah, the sum of three hundred fifty thousand dollars (\$350,000) in settlement of his claims against the said Republic.

IV. That on the twelfth day of August, 1930, in pursuance of said agreement of April 12, 1925, the said Charles J. Harrah assigned to the petitioners' law firm of Carlin, Carlin & Hall the sum of \$24,937.50 to be paid them out of the said trust fund of three hundred fifty thousand dollars (\$350,000) in the Treasury of the United States for the benefit of the said Charles J. Harrah; and on the said twelfth day of August, 1930, the said Charles J. Harrah, with the consent in writing of the petitioners' associate, the said John A. Beck, assigned to the petitioner, Charles C. Carlin, trustee, the sum of thirteen thousand dollars (\$13,000) out of the said John A. Beck's part of the contingent fee due him by the said Charles J. Harrah.

3 V. That on the said twelfth day of August, 1930, they, on behalf of the said law firm of Carlin, Carlin & Hall, and the said Charles C. Carlin, as trustee, filed with the Secretary of State the said assignment set out in Paragraph IV herewith (Exhibit B), and on December 17, 1930, the Secretary of State, in accordance with provisions of the act of February 26, 1896 (29 Stat. 32, 31 U. S. C., sec. 547) issued to the petitioners' law firm of Carlin, Carlin & Hall, certificate No. 2608 authorizing and directing the Secretary of the Treasury to pay to the said law firm the sum of \$24,937.50, and on the same date issued to the said petitioner, Charles C. Carlin, trustee, certificate No. 2609 authorizing and directing the Secretary of the Treasury to pay to him as trustee the sum of \$13,000, both of said sums to be paid out of the following-named trust fund:

"(IT 600) Claim of Charles J. Harrah against Cuba." Copies of said certificates are attached hereto, marked "Exhibits B and C," respectively, and are prayed to be read as a part of this petition.

VI. The petitioners say that by reason of their professional services and those of their associate, the said John A. Beck, to the defendant, Charles J. Harrah, in prosecuting his claim against the Republic of Cuba for the destruction of his railroad and in securing the award and payment of the three hundred fifty thousand dollars (\$350,000) by the Cuban Government to the Treasury of the United States in trust for the said Harrah, the said petitioners' law firm of Carlin, Carlin & Hall, and the petitioner, Charles C. Carlin, trustee, under the assignment from the said John A. Beck, had and have a prior equitable lien upon the said sum of three hundred fifty thousand dollars (\$350,000) produced by their services, as aforesaid; and that in recognition of said equitable lien and in payment of said services, the said Harrah assigned to the petitioners out of said trust fund the said aggregate sum of \$37,937.50, which aggregate sum had been certified by the Secretary of State to be paid to them by the respondent, Andrew W. Mellon, Secretary of the Treasury; the

4 petitioners further say that by reason of their prior lien, and of the said certificates issued to them by the said Secretary of State, no other person has any interest whatsoever in the moneys certified to be paid to them by the Secretary of the Treasury.

VII. That under the provisions of the said act of February 27, 1896 (29 Stat. 32), moneys received by the Secretary of State from foreign governments in trust for the citizens of the United States are required to be covered into the Treasury, and—

“The Secretary of State shall determine the amounts due claimants, respectively, from each of such trust funds, and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due.”

Under the provisions of said act the petitioners are entitled to be paid the sums certified to be due them by the Secretary of State, and it was and is the ministerial duty of the respondent, Andrew W. Mellon, Secretary of the Treasury, to pay to these petitioners the amounts found due them by the Secretary of State.

VIII. That on December 17, 1930, the petitioners filed with the said Secretary of the Treasury the said certificates Nos. 2608 and 2609, set out in Paragraph V (Exhibits C and D) and requested payment thereof in accordance with the provisions of the act of February 26, 1896 (29 Stat. 32), but notwithstanding the plain ministerial duty of the said respondent, Andrew W. Mellon, Secretary of the Treasury, to pay the same he has refused and still refuses to do so.

Wherefore the petitioner prays:

1. That a writ of mandamus may be issued directing the respondent, Andrew W. Mellon, Secretary of the Treasury of the United States, to pay to the said petitioners composing the law firm of Carlin, Carlin & Hall the sum of \$24,937.50 and to the petitioner, Charles C. Carlin, trustee, the sum of \$13,000, the amounts found to be due them by the said Secretary of State.

2. That a rule may be issued requiring the respondent, Andrew W. Mellon, Secretary of the Treasury of the United States, to show

5 cause, if any he can, why the writ of mandamus should not be
issued herein as prayed.

CARLIN, CARLIN & HALL,
By C. C. CARLIN.
C. C. CARLIN, *Trustee*.

DISTRICT OF COLUMBIA, *to wit*:

Charles C. Carlin, being first duly sworn, deposes and says that he is one of the petitioners herein; that he has read the allegations of said petition, and knows the same to be true, except such matters as are alleged on information and belief, and as to those he believes them to be true.

CHARLES C. CARLIN.

Subscribed and sworn to before me this 4th day of March, 1931.

[NOTARIAL SEAL.]

WANDA G. PEARSON,
Notary Public.

My commission expires the 12th day of May, 1931.

LESLIE C. GARNETT,
JEROME SIMMONS,
Attorneys for Petitioners.

EXHIBIT A

This agreement, made this 12th day of April, A. D. 1925, by and between Charles J. Harrah y Messister, a citizen of the United States, temporarily residing in the city of Havana, Cuba, first party, hereinafter called principal, and the law firms of Wade & Beck, with offices at suite 635 Southern Building, Washington, D. C., and Carlin, Carlin & Hall, with offices at suite 1127 Munsey Building, Washington, D. C., second parties, hereinafter called agents, witnesseth:

That the said principal hereby retains and employs the law firms of Wade & Beck and Carlin, Carlin & Hall as his exclusive agents to represent, appear, and act for said principal in connection with certain claims which said principal has against the Republic of Cuba resulting from the unlawful acts of certain officials thereof, and to prosecute said claims before the President of the United States and/or any of the executive departments of the United States or any arbitral commission or tribunal having or which may have jurisdiction of said claim.

For their services in the premises said principal agrees to pay said agents as a contingent fee a sum equal to fifteen per cent (15%) of the gross amount that may be collected for said principal by adjustment, compromise, settlement, arbitration, suit, judgment, legislation, or otherwise.

And said agents hereby accept said employment and hereby agree to render the services herein referred to upon the terms and conditions above set forth.

C. J. HARRAH.
WADE & BECK.
By JOHN A. BECK.
CARLIN, CARLIN & HALL,
By C. C. CARLIN.

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EXHIBIT B

Certificate No. 2608.

DEPARTMENT OF STATE,
December 17, 1930.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant to be issued in accordance with the provisions of the act of February 26, 1896 (29 Stat. 32), in favor of Carlin, Carlin & Hall, Munsey Building, Washington, D. C., twenty-four thousand nine hundred thirty-seven and 50/100 dollars, which amount I hereby certify to be due and payable out of the following-named trust fund.

"(IT 600) Claim of Charles J. Harrah against Cuba."

HENRY L. STIMSON,
Secretary of State.

\$24,937.50.

BA.

JHM.

GKH.

8

EXHIBIT C

Certificate No. 2609.

DEPARTMENT OF STATE,
December 17, 1930.

To the SECRETARY OF THE TREASURY.

SIR: Please cause warrant to be issued in accordance with the provisions of the act of February 26, 1896 (29 Stat. 32), in favor of C. C. Carlin, trustee, Munsey Building, Washington, D. C., thirteen thousand and no/100 dollars, which amount I hereby certify to be due and payable out of the following-named trust fund.

"(IT 600) Claim of Charles J. Harrah against Cuba."

HENRY L. STIMSON,
Secretary of State.

\$13,000.00.

BA.

JHM.

GKH.

9

Rule to show cause

Filed Mar. 5, 1931

Upon consideration of the petition filed in the above-entitled case, it is by the court this 5th day of March, 1931, ordered: That the respondent, Andrew W. Mellon, Secretary of the Treasury of the United States, be, and he is hereby, required to show cause, if any he can, on or before the 25th day of March, 1931, at ten o'clock a. m., why the writ of mandamus should not issue as in the petition prayed: *Provided*, That a copy of said petition and of this order be served upon the said respondent on or before the 10th day of March, 1931.

(Signed) F. L. SIDDONS, *Justice.*

(Marshal's return:) Served a copy of the within rule on Andrew W. Mellon, Sect. of Treasury, 3/6/31, personally. Edgar C. Snyder, U. S. Marshal in and for the Dist. of Columbia. By Harry C. Allen, Deputy U. S. Marshal. B.

10 *Respondent's answer to petition and rule to show cause*

Filed Mar. 23, 1931

Comes now the respondent and in answer to the relator's petition herein filed as well as by way of return to the rule to show cause herein issued, says:

1. This respondent admits paragraphs one and two of the petition.

2. With reference to the averments contained in paragraph three of the petition, this respondent admits that the sum of \$350,000 was paid by the Republic of Cuba to the Government of the United States, and that the sum of \$349,190 was deposited in the Treasury of the United States (the sum of \$810.00 having been deducted on account of exchange), but with reference to all other averments contained in paragraph three of the petition this respondent neither admits nor denies the same, but if the same may be deemed material calls for strict proof thereof.

3. This respondent neither admits nor denies the averments contained in paragraph four of the petition, but if the same be deemed material calls for strict proof thereof.

11 4. This respondent admits the averments contained in paragraph five of the petition.

5. Answering the averments of paragraph six of the petition, this respondent says that said averments are wholly conclusions of law which are unnecessary to affirm or deny.

6. This respondent admits all of the averments contained in paragraph seven of the petition, but denies that it is the respondent's ministerial duty in this particular case to pay these petitioners the amounts found due them by the Secretary of State, for the reason that this respondent has been impleaded in five cases instituted on the equity side of this court (which cases are more specifically herein referred to) by various and sundry persons claiming adverse title to said funds, which causes are now pending in the Court of Appeals of the District of Columbia or are in process of being calendared on the docket of that court.

7. This respondent admits that the petitioners herein filed with said respondent certificates numbers 2608 and 2609 issued by the Secretary of State, but denies that he has refused to pay the said petitioners the amounts due them on certificates numbers 2608 and 2609, but charges the fact to be that under date of December 27, 1930, said certificates numbers 2608 and 2609 were transmitted to the Comptroller General of the United States for the purpose of having that official issue his certificate of settlement in accordance with law, which certificate of settlement has not as yet been issued by the Comptroller General of the United States, and this respondent is not authorized by law to issue warrants in payment of certificates numbers 2608 and 2609 unless and until a proper certificate of settlement has been regularly issued by the Comptroller General of the United States and transmitted to this respondent.

12 Further answering, this respondent says that the money in question received from the Republic of Cuba through the State Department of the United States is held by him as a stakeholder, and that prior to the filing of this petition these bills were filed on the

equity side of this court claiming an aggregate amount of \$760,000, which cases are more particularly described on the attached schedule marked "Respondent's Exhibit A," which this respondent prays to be considered as a part of this answer the same as if it were incorporated herein. This respondent further avers that the equity suits herein referred to have all been dismissed, and the respective plaintiffs have perfected appeals in said cases, which appeals are now either pending before the Court of Appeals of the District of Columbia, or are in process of being calendared on the dockets of that Court.

This respondent submits that even though the Comptroller General of the United States had issued his certificate of settlement, which he has not done, he, the respondent, could not recognize the claims of the petitioners to the amounts called for by certificates numbers 2608 and 2609 without ignoring the conflicting claims of Walter Fletcher Smith, the General Sand Company, Edgar W. McCormack, and Juan Ulloa y Ferro et al., between whom, and Charles J. Harrah, and/or the petitioners herein, litigation in respect to said award, is now and has for a long time been pending. The respondent further says that if and when the certificate of settlement is issued by the Comptroller General of the United States he will be willing to pay whatever sum or sums may be due on certificates numbers 2608 and 2609, out of the money received from the Republic of Cuba, on an order of acquittance signed by all of the rival claimants of said fund, which this respondent respectfully submits to this honorable court is as much as could be
13 States in a litigation in which it has no interest whatsoever.

This respondent respectfully submits to this honorable court as a further defense to the prayers contained in the petition herein that the Comptroller General of the United States is a proper and necessary party to this action, for the reason that it would be absolutely impossible for him to make payment to the said petitioners of the amounts called for by certificates numbers 2608 and 2609 unless and until the Comptroller General of the United States issues his certificate of settlement as provided by law.

Finally this respondent says that the plaintiffs, Juan Ulloa y Ferro et al., Equity No. 52263 and Equity No. 51820; Edgar W. McCormack, Equity No. 51697; the General Sand Company, Equity No. 52266; and Walter Fletcher Smith, Equity No. 51751, are proper and indispensable parties to this suit.

Wherefore, having made full and complete answer to the petition, this respondent prays that the rule herein issued may be discharged and that the petition be dismissed and that he may recover reasonable costs in this behalf expended.

A. W. MELLON,
Secretary of the Treasury.

R. J. MAWHINNEY,
Solicitor of the Treasury.

DANIEL P. McDONALD,
Special Attorney.

JOHN R. BENNEY,
Special Attorney, Counsel for the Respondent,
Andrew W. Mellon, Secretary of the Treasury.

14 DISTRICT OF COLUMBIA, ss:

Andrew W. Mellon, Secretary of the Treasury, on oath says, that he has read the foregoing answer; that he is informed that the matters of fact therein stated are true and he believes them to be true.

A. W. MELLON,
Secretary of the Treasury.

Subscribed and sworn to before me this 21st day of March, 1931.

[NOTARIAL SEAL.]

SAMUEL H. MARKS,
Notary Public, D. C.

My commission expires December 12, 1932.

Respondent's Exhibit A

Title	Equity number	Amount
McCormack v. Harrah et al.....	51697	\$35,000.00
Smith v. ".....	51751	275,000.00
Ulloa and Co. v. ".....	51820	350,000.00
Ulloa and Co. v. ".....	52263	350,000.00
General Sand Co. v. ".....	52266	100,000.00

15 *Demurrer to the respondent's answer to the rule to show cause and to the petition*

Filed Mar. 24, 1931

Now comes Charles C. Carlin, sr., Charles C. Carlin, jr., and M. Carter Hall, petitioners herein, and demur to the answer of the respondent to the rule to show cause and to the petition, and say the same is insufficient in law.

LESLIE C. GARNETT,
JEROME SIMMONS,
Attorneys for Petitioners.

NOTE.—Among the points to be argued are the following:

1. The Secretary of State having determined under the act of February 26, 1896 (29 Stat. 28) that the petitioners are entitled to the money awarded and certified by him to be paid them, only ministerial duty is vested in the Secretary of the Treasury to pay the same.

2. The respondent is not justified in refusing to perform the ministerial duty imposed upon him to pay the awards and certificates issued by the Secretary of State to these petitioners merely because of the pendency of certain appeals from orders of dismissal of suits by this court, from which orders no writs of supersedeas or restraining orders of any kind have been awarded.

3. The moneys paid into the Treasury of the United States
16 in trust for Harrah were produced by the professional services of the petitioners, who have an equitable lien thereon for such services superior to those of any other person.

4. The awards and certificates of the Secretary of State drew to the equitable lien of the petitioners legal title to the moneys covered thereby, and it is the ministerial duty of the respondent to pay the same.

5. The moneys paid into the Treasury of the United States in trust for Harrah are not moneys of the United States; the petitioners are asserting no claims or demands whatsoever against the United States, and the Comptroller General is not authorized by law to issue any certificates of settlement of the certificates already awarded by the Secretary of State, and is not a proper, necessary or indispensable party to this suit.

6. No other person has any interest whatsoever in the awards and certificates issued to the petitioners by the Secretary of State, and there are no other proper, necessary, or indispensable parties to this suit.

R. J. MAWHINNEY, Esq.,

Solicitor of the Treasury,

DANIEL P. McDONALD, Esq.,

Special Attorney,

JOHN R. BENNEY, Esq.,

Special Attorney, Counsel for the respondent.

Please take notice that the foregoing demurrer will be for hearing before the Supreme Court of the District of Columbia on Friday, March 27th, at 10 a. m., or as soon thereafter as the same may be heard.

LESLIE C. GARNETT,
JEROME SIMMONS,
Attorneys for Petitioners.

March 24, 1931.

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Order

Filed Apr. 8, 1931

This cause came on to be heard upon the petition of the relators, the rule to show cause, the answer of the respondent to the said petition and rule, and the demurrer to said answer, and, after argument of counsel, was submitted to the court:

Upon consideration whereof the court doth this April 8th, 1931, sustain said demurrer, and the said respondent, by his attorney, electing to stand upon said answer, it is ordered and adjudged that the prayers of the petition be, and the same are hereby, granted, and that a writ of mandamus be issued herein directed to the respondent, Andrew W. Mellon, Secretary of the Treasury, commanding him to pay to the said petitioners, composing the law firm of Carlin, Carlin & Hall, the sum of twenty-four thousand nine hundred thirty-seven dollars and fifty cents (\$24,937.50), and to the petitioner, Charles C. Carlin, trustee, the sum of thirteen thousand dollars (\$13,000), the same being the amounts found to be due them by the Secretary of State and covered by his certificates Nos. 2608 and 2609, respectively, issued to them.

From the foregoing order the respondent, by his attorneys, in open court notes an appeal to the Court of Appeals of the District of Columbia, and the operation hereof is suspended for a period of twenty (20) days.

F. L. SIDDON, *Justice.*

No objection as to form.

DANIEL P. McDONALD,
Special Attorney for the Respondent.

Assignment of error

Filed Apr. 23, 1931

The respondent hereby specifies the following assignments of error to be considered on the appeal in the above-entitled case:

1. The court erred in directing the issuance of the writ of mandamus to the respondent in this case.

2. The court erred in sustaining the demurrer to the respondent's answer.

3. The court erred in requiring the respondent to disburse forthwith the fund while equity suits asserting adverse claims to and liens upon the said fund are pending on appeal in this court.

4. The court erred in ordering the disbursal of the fund in controversy forthwith, the execution of which order would deprive the Court of Appeals of jurisdiction to proceed with the cases enumerated in the respondent's answer, which cases are now before this court, with the exception of *Ulloa & Company vs. Harrah et al.*, Equity No. 52263, and *General Sand Company vs. Harrah et al.*, Equity No. 52266, these two cases having been dismissed.

19 5. The court erred in ordering the disbursal of the fund in controversy while the sole parties before the court were the petitioners and the respondent, thus depriving the litigants in the cases now on appeal to this court of their right to a hearing by this court on their claims.

6. The court erred in not holding that because the fund in controversy is now in the possession of the respondent in the capacity of a stakeholder he is legally bound to hold and retain said fund until the final determination of any suits filed to establish the ownership thereof.

7. The court erred in not holding that it would be a contempt of the appellate jurisdiction of this court to disburse the fund in controversy while the appeals in the various suits in equity to enforce liens and declare equitable assignments thereon are pending before this court.

8. The court erred in not holding that the certificate of the Secretary of State is merely prima facie evidence of the right of the petitioners to payment of such fund, and that such right is subject to any lien or equitable assignment which may be enforced in an equitable proceeding to determine the ultimate payee of the fund.

9. The court erred in holding that the Comptroller General was not a necessary party to the mandamus proceeding.

R. J. MAWHINNEY,

Solicitor of the Treasury.

DANIEL P. McDONALD,

Special Attorney.

JOHN R. BENNEY,

Special Attorney.

Counsel for the Respondent, Andrew W. Mellon.

20 *Stipulation by petitioners and respondent as to designation of record*

Filed Apr. 25, 1931

The petitioners and the respondent, by their respective attorneys below named, hereby stipulate and agree that the following papers and records shall constitute the transcript of record on the appeal in the above-entitled case.

1. Petition with Exhibits A, B, and C, filed March 5, 1931.
2. Rule to show cause entered March 5, 1931.
3. Answer with Exhibit A filed March 23, 1931.
4. Demurrer to answer filed March 24, 1931.
5. Order sustaining demurrer and granting the writ of mandamus entered April 8, 1931, with allowance of appeal.
6. Assignment of error filed April 23, 1931.
7. This designation of record.

R. J. MAWHINNEY,
Solicitor of the Treasury.

DANIEL P. McDONALD,
Special Attorney.

JOHN R. BENNEY,
*Special Attorney, Counsel for
the Respondent, Andrew W. Mellon.*

LESLIE C. GARNETT,
Counsel for Petitioners.

21 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 20, both inclusive, to be a true and correct transcript of the record, according to stipulation of counsel herein filed, copy of which is made part of this transcript, in cause No. 79328 at law, wherein United States *ex rel.* Charles C. Carlin, sr., Charles C. Carlin, jr., and M. Carter Hall, &c., are petitioners, and Andrew W. Mellon, Secretary of the Treasury, is respondent, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 27th day of April, 1931.

[SEAL.]

FRANK E. CUNNINGHAM, *Clerk.*

(Indorsed on cover:) District of Columbia, Supreme Court. No. 5396. Andrew W. Mellon, Secretary of the Treasury, appellant, *vs.* U. S. *ex rel.* Charles C. Carlin et al. Court of Appeals, District of Columbia. Filed Apr. 28, 1931. Henry W. Hodges, clerk.

COURT OF APPEALS,
DISTRICT OF COLUMBIA
FILED

MAY 27 1931

IN *Henry W. Hodges*

Court of Appeals of the District of Columbia

APRIL TERM, 1931

No. 5396, Special Calendar

ANDREW W. MELLON, *Secretary of the Treasury,*
APPELLANT

vs.

UNITED STATES OF AMERICA, EX REL. CHARLES
C. CARLIN, SR., CHARLES C. CARLIN, JR., AND
M. CARTER HALL, TRADING AS CARLIN, CARLIN
& HALL, AND CHARLES C. CARLIN, *Trustee,*
APPELLEES

*Appeal from the Supreme Court of the District of
Columbia.*

BRIEF FOR APPELLEES

LESLIE C. GARNETT,
JEROME SIMMONS,
Attorneys for Appellees.

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IN THE
Court of Appeals of the District of Columbia

APRIL TERM, 1931

No. 5396, Special Calendar

ANDREW W. MELLON, *Secretary of the Treasury*,
APPELLANT

vs.

UNITED STATES OF AMERICA, EX REL. CHARLES
C. CARLIN, SR., CHARLES C. CARLIN, JR., AND
M. CARTER HALL, TRADING AS CARLIN, CARLIN
& HALL, AND CHARLES C. CARLIN, *Trustee*,
APPELLEES

*Appeal from the Supreme Court of the District of
Columbia.*

BRIEF FOR APPELLEES

STATEMENT

Petition was filed in the Court below praying a mandamus to compel the Secretary of the Treasury to pay the certificates issued to the appellees by the Secretary of State in the sum of \$37,937.50 (R. 1-3). The appellees were attorneys for Charles J. Harrah and prosecuted his claim against the Republic of Cuba before the State Department and an arbitral commission appointed by the Governments of the United States and of Cuba, and as a result of their professional

efforts, Cuba paid into the Treasury of the United States through the Secretary of State in trust for Harrah the sum of \$350,000. Under the Act of February 27, 1896 (29 Stat. 32, 31 U. S. C., Sec. 547) the Secretary of State was authorized to cover this money into the Treasury, and to certify to the Secretary of the Treasury the amounts due claimants therefrom, and upon presentation of the certificates of the Secretary of State, the Secretary of the Treasury was directed to pay the amounts so found to be due. Harrah assigned to the appellees in recognition of their attorneys' charging lien the aggregate sum of \$37,937.50; the Secretary of State issued to them his certificates (R. 5) for said sum which were presented to the Secretary of the Treasury, but he refused to pay the same. The answer of the Secretary to the Rule to Show Cause (R. 6) admits these facts alleged in the petition, but seeks to justify his refusal to pay the certificates of the Secretary of State on the following grounds: (1) because there were pending in this Court on appeal certain suits in equity which were filed in the lower Court to enjoin the respondent from paying, and Harrah from receiving, the sum paid into the Treasury in trust for the latter, which suits for injunction had been dismissed by the lower Court, and in which no stay orders were entered; (2) that the Comptroller General and the plaintiffs in the dismissed bills for injunction were indispensable parties to this action.

The petitioners, appellees herein, demurred to the answer as insufficient on the grounds therein enumerated (R. 8).

The Court below sustained the demurrer, and the Secretary electing to stand thereon the mandamus was awarded commanding him to pay the petitioners the amounts covered by the certificates of the Secretary of State. (R. 9).

Propositions

To support the judgment of the Court below, we present the following propositions:

1. The appellant has no right of appeal, neither the United States nor the Secretary of the Treasury being aggrieved by the order appealed from.

2. The pending appeals from orders dismissing suits for injunction, no supersedas or restraining orders of any kind having been awarded, do not excuse the appellant from performing his ministerial duty to pay the petitioners the amounts covered by the certificates of the Secretary of State.

3. Neither the Comptroller General nor the plaintiffs in the dismissed suits for injunction are necessary parties to this action.

ARGUMENT.

1. The Appellant Has No Right Of Appeal, Neither The United States Nor The Secretary of The Treasury Being Aggrieved By The Order Appealed From.

The appellant admits in his answer that the money paid by the Republic of Cuba to the State Department "*is held by him as a stakeholder*" (R. 6), and that the United States "*has no interest whatsoever*" in this litigation, (R. 7).

Section 226 of the Code of the District of Columbia provides as to the jurisdiction of this Court, as follows:

"Any parties *aggrieved* by any final order, judgment or decree of the Supreme Court of the District of Columbia * * * may appeal therefrom to the said Court of Appeals * * *."

In construing this statute this Court has said in *Barksdale, Exec. v. Morgan*, 34 App. 549; 38 W.L.R. 250:

“Under our statute, it is a condition precedent to the right of appeal that the appellant must show that he is directly aggrieved by the order appealed from.”

The Barksdale case involved the right of an executor to appeal from an order distributing the fiduciary funds under his administration. In holding that such fiduciary could not appeal the Court said the disallowance “does not in any sense legally aggrieve the appellant,” and “that being true, he is placed by this appeal in the attitude of prosecuting a claim against the estate which it is his duty to defend.”

The action of the Secretary in this case is analogous to the executors in that case. By the appeal his neutrality as a stakeholder ceases, and he prosecutes the appeal adversely to the parties declared by the statute and the Court below to be entitled to the money.

This Court in *McAdoo v. Ormes*, 47 App. 364, (affirmed in *Houston v. Ormes*, 252 U. S. 469; 64 L. ed. 669) at least mildly rebuked the Secretary of the Treasury for prosecuting an appeal where the United States could be neither winner nor loser in the following language:

“The Government is a disinterested party—a mere stakeholder—and appellants are charged only with the ministerial duty of obeying the order of the court, which furnishes a complete acquittance. Just why this appeal should have been prosecuted by appellants, after the real party in interest had concurred in the decrees and abandoned the suit,

is not apparent, since the United States can not be either a winner or loser from the judgment, whatever it may be."

The Circuit Court of Appeals (2d Circuit) in *United States v. Levinson*, 267 Fed. 692, considered the right of the United States as a stakeholder to appeal from the decision which did not aggrieve it. In that case each of two bidders claimed to be the purchaser of a vessel offered for sale by the Government. The Secretary of the Navy executed a bill of sale to a lower bidder, but held possession of the vessel and filed a bill of interpleader. The court below held the lower bidder entitled to the vessel. An appeal was taken both by the highest bidder and by the United States. The Court of Appeals reversed the case, holding that the highest bidder was entitled to the vessel which had not been delivered, but as to the appeal by the United States, said (p. 694):

"We are of opinion that the United States, being a mere *stakeholder*, has no standing to take an appeal, and its appeal is dismissed, but that the Secretary, having no authority to deliver the bill of sale to Levinson and being bound to deliver it to Johnson, being the highest bidder, the decree must be reversed."

The United States as represented by the Secretary of the Navy in that case is in the exact position in which the Secretary of the Treasury finds himself in this case, who, being a mere stakeholder, has no standing to appeal. See also *Greer v. Union Nat. Life Ins. Co.*, 217 Fed. 293; *King v. Buttolph*, 30 Fed. (2d) 769.

The Secretary of Treasury is in no sense *aggrieved* by the order commanding him to perform his

ministerial duty. On the contrary, he earnestly asserted in the dismissed equity suits that they were wholly without equity, and as equally earnestly urged this Court to dismiss, as frivolous and taken for delay only, the appeals from the orders dismissing those suits for injunction.

Under the clear terms of Section 226 of the Code, neither the appellant nor the United States being aggrieved by the order awarding the mandamus, he has no standing to prosecute this appeal.

2. The Pending Appeals From Orders Dismissing Suits For Injunction, No Supersedeas Or Restraining Order Of Any Kind Having Been Awarded, Do Not Excuse The Appellant From Performing His Ministerial Duty To Pay The Petitioners The Amounts Covered By The Certificates Of the Secretary Of State.

- (a) The action of the Secretary of the Treasury gives to the dismissed injunction suits the effect of an injunction where none has been granted.

There are now pending in this Court only two appeals in the dismissed injunction suits, to-wit., *McCormick v. Harrah, et al*, No. 5368, and *Smith v. Harrah, et al*, No. 5369. In neither of these cases are the appellees, or any of them, parties, and in neither is there any lien upon the funds certified by the Secretary of State to be paid to them. We have pointed out that the Secretary in his answer admits that he is a *mere stakeholder*, and that the United States *has no interest whatsoever* in this litigation. (R. 8, 9). The money is not money of the United States, and the Secretary's duty is purely ministerial.

The Act of February 27, 1896 (29 Stat. 32, 31 U. S. C. A. 547) provides as follows:

Sec. 547. Disposition of trust funds received from foreign governments for citizens of United States. All moneys received by the Secretary of State from foreign governments and other sources, in trust for citizens of the United States or others, shall be deposited and covered into the Treasury.

The Secretary of State shall determine the amounts due claimants, respectively, from each of such trust funds, and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due.

Each of the trust funds covered into the Treasury as aforesaid is hereby appropriated for the payment to the ascertained beneficiaries thereof of the certificates herein provided for. (Feb. 27, 1896, c. 34, 29 Stat. 32.)”

Such funds were held not to be money of the United States in *Orinoco Company v. Orinoco Iron Co.*, 296 Fed. 965, 972, affirmed *Mellon v. Orinoco Iron Co.*, 266 U. S. 121. The language of the Court of Appeals in that case is as follows:

“The iron company is not seeking in this suit to recover anything from the United States. It is conceded, and properly so, that the money in question is held in the treasury as a trust fund. The government has no claim to it and it makes none. No matter what the outcome of the suit might be, the government would receive none of the fund. For this reason the suit is not against the United States, as argued by the appellants.”

In *McAdoo v. Ormes*, *supra*, the court considered the duty upon the Secretary to pay money appropriated

by Congress in settlement of a judgment of the Court of Claims, and there quoted from *Roberts v. Consaul*, 24 App. (D. C.) 551, as follows:

“By the act of the appropriation the appellant, as treasurer of the United States, is charged with the plain, ministerial duty of making immediate payment upon the demand of the person specified therein. *If unrestrained by the order of a court having jurisdiction in the premises, he should refuse to make the payment to the claimant a court of law would compel him to do so by writ of mandamus.* *Roberts v. U. S.*, 13 App. (D. C.) 38, 176, U. S. 221-231, 26 W. L. R. 375.”

This case in the Court below involved precisely the same question. Here Congress, by the general appropriation act, *supra*, appropriated the proceeds of the award to the payment of the certificates of the Secretary of State, and it is foreclosed by the decision in the *Ormes* case, *supra*, that a mandamus will compel the Secretary to discharge his ministerial duty to make immediate payment *unless he is restrained by the order of a court of competent jurisdiction.*

(b) The effect of the appeals from the orders dismissing the bills for injunction.

The appellant refused to pay to the petitioners the awards covered by the certificates of the Secretary of State on the ground that there might be a possibility of double payment should either of the appellants in the dismissed injunction suits prevail in this Court, and he now seeks to justify his refusal to obey the order of mandamus upon the same ground.

The law is definitely settled that the mere prosecution of an appeal cannot operate as an injunction

where none has been granted. In *Shaw v. Lane*, 47 App. (D. C.) 170, 173, it is said:

“The general rule is well settled that an appeal from a decree granting, refusing or dissolving an injunction does not disturb its operative effect. (Citing cases.) When an injunction has been dissolved, it cannot be revived except by a new exercise of judicial power, and no appeal by the dissatisfied party can of itself revive it. *A fortiori*, the mere prosecution of an appeal cannot operate as an injunction where none has been granted. *Knox v. Harshman*, 132 U. S. 14, 33, L. ed. 249.”

The language of the above case is that of Chief Justice Fuller in the *Knox* case therein cited. In *Chesapeake Western Railway Co. v. Jardine*, 8 Fed. (2d) 794, the language of the *Shaw* case is quoted. In that case during the pendency of an appeal from a decree dismissing a bill for injunction, the Secretary of Agriculture acted, and upon motion thereafter filed, the appeal was dismissed as moot. In *Hovey v. McDonald*, 109 U. S. 150, 161, a receiver of the court paid out money in the absence of a stay order while an appeal was pending. Citing the *Slaughter House* cases, 10 Wall. 273, the court held that the appeal from an order refusing an injunction did not disturb its operative effect. See also the language of Justice McComas in *Cardoza v. Baird*, 30 App. (D. C.) 86.

The refusal of the Secretary of the Treasury to pay the certificates of the Secretary of State gives to the appeal from the order dismissing the suits for injunction the effect of an injunction where none has been granted, and holds up the payment of the fees of the appellees for the benefit of alleged creditors of Harrah who could have protected themselves by procuring under proper bond a stay order maintaining the *status quo* in those equity suits.

(c) The command of the writ of mandamus completely protects the appellant in paying these certificates.

In awarding the mandamus the Court below necessarily adjudicated—(1) that the appellees and no-one else are entitled to the funds covered by these certificates; and (2) that it is the duty of the appellant to pay the said funds to the appellees. The appellees are in the nature of judgment creditors and the order of mandamus is a substitute for the ordinary process of execution to enforce the payment of these certificates. The writ of mandamus is a complete bar, both criminal and civil, to any action against the Secretary when he obeys it. This Court in the *Ormes* case, *supra*, in language already quoted, said:

“The Government is a disinterested party—a mere stakeholder—and appellants are charged only with the ministerial duty of obeying the order of the court which furnishes a complete acquittance.”
(Italics ours.)

The complete bar to any action against the Secretary, if he should obey the writ of mandamus, is further declared, in principle, in *United States v. Johnson County* and *United States v. Henry County*, 6 Wall. 166, 18 L. ed. 768. There judgment had been obtained in the Circuit Court of the United States against these Counties in Iowa. The Board of Supervisors refused to levy a tax. A mandamus was sought to compel the Board to act. The Supervisors alleged in return to the order to show cause that to obey the mandamus would expose them to a suit for damages and attachment for contempt. The Supreme Court, after pointing out that these apprehensions were not justified, said:

“Should it be otherwise, however, the defendants will find the most ample means of protection at hand. Proper course for them to pursue, *in case they are sued for damages, is to plead the commands of the writ in bar of the suit*, and if their defense is overruled, and judgment is rendered against them, a writ of error will lie to the judgment, under the 25th section of the Judiciary Act, 1 Stat. at L., 73.” (Italics ours.)

The judgment of the Supreme Court of the District of Columbia awarding this mandamus, if unreversed, is as full protection to the Secretary in paying these appellees, as the order of this Court affirming such judgment will be, or the order of the Supreme Court of the United States to the same effect.

We deem it unnecessary to analyze all the cases cited for the appellant, or differentiate them from the instant case. The main reliance seems to be upon *Bayard v. White*, 127 U. S. 246, *MacKenzie v. Engelhard*, 266 U. S. 131, 69 L. ed. 205, and *United States v. Borcheling*, 185 U. S. 223, 46 L. ed. 884. These cases are easily distinguished. In the *White* case, the specific question presented for determination was as to whether or not the Secretary of State could be compelled by mandamus to adjudicate the title to certain moneys received under an award against Mexico as between Porter and White. Both parties claimed under an assignment by the awardee of one-half of the specific fund, which assignment had therefore been judicially determined to be valid. The Secretary of State in his answer asserted that the claims of Porter were “of the same character and extent” as those of White. Indeed, this controversy originating in the Supreme Court of the District of Columbia, was finally carried to the Supreme Court of the United States in the case of *Porter v. White*,

127 U. S. 235 (the case immediately preceding *Bayard v. White*. Porter's claim to a part of the fund had been upheld by the lower Court. This clearly distinguishes that case from the case at bar. Here there has been no adjudication that any part of the claims of Smith or McCormick was valid. On the contrary their cases have been twice dismissed as without equity. They completely failed to establish any claim whatever in or to the fund either before the Secretary of State or before the courts. Nor in the *White* case had the Secretary of State in fact made any determination as to who was entitled to this fund as between White and Porter. Here the Secretary of State has made such a finding and has issued his certificate to the appellees. Again, the mandamus there was sought against the Secretary of State to compel him to adjudicate in a particular way where he was clothed with authority to determine to whom the money should go. There was no statute then in force conferring upon the Secretary of the Treasury a mere ministerial duty to pay the certificates issued by the Secretary of State. That case was long prior to the Act of February 27, 1896, under which the appellees, here, sought in the court below to compel the Secretary of the Treasury to carry out the plain mandate of the Act to pay the certificates of the Secretary of State issued to them.

In the *Mackenzie* case, *supra*, the sole question the Supreme Court was called upon to determine was whether the purchaser of the shares of stock at a judicial sale under the decree of a State court got absolute title to the stock, or could merely recover in equity the amount of his lien thereon, with interest. The Supreme Court reversed the Circuit Court of Appeals and held that such purchaser in the State court "was absolutely entitled to the stock" in the following language:

"It is immaterial what were the limits of the plaintiff's original interest; he comes before this court as absolutely entitled to the stock, and the preliminaries to his acquiring the title have no bearing on the case. He got it at a better bargain than he would have done had his adversaries taken a different course, but he got it, and his right is not to be impugned."

While the court held that the preliminaries to the purchaser's acquiring the title in that case had "no bearing on the case." it did say that under the Kentucky law a purchaser of such stock from the defendant *pendente lite* stood in the shoes of the defendant. This has no bearing on the controversy here, and in no sense supports the contention of the appellant that the Secretary could be required to pay the money covered by appellees' certificates to somebody else, after he had paid it to the appellees. The decisions of this court that it is the duty of the Secretary to make immediate payment, unless restrained by the order of a competent court (*McAdoo v. Ormes*, *supra*); that the mere prosecution of an appeal cannot operate as an injunction where none has been granted (*Chesapeake Western Ry. Co. v. Jardine*, *supra*); that the writ of mandamus "furnishes a complete acquittance" (*McAdoo v. Ormes*, *supra*); and "is a complete bar" to any further suit (*United States v. Johnson County*, *supra*); and that upon payment the pending appeals become moot (*Chesapeake Western Ry. Co. v. Jardine*, *supra*), wholly control this case, regardless of what the rule in Kentucky may be as to purchasers of stock *pendente lite*.

In the *Borcheling* case the courts of New Jersey, affirmed by the Supreme Court of the United States, had declared title to the funds in the Treasury vested

in Borcheling, as receiver of Price. With full notice of this, the Treasurer of the United States paid the money to Price or his administrators. The Supreme Court held that title having vested in the receiver, such payment could not be successfully pleaded in the Court of Claims as a lawful discharge of the United States. There is no parallel between that case and this.

In *LeCrone v. McAdoo*, 48 App. (D. C.) 181, and *Knickerbocker Ins. Co. v. Mellon*, 41 Fed. (2d) 119, cited for the appellant, the petitioners in each case seeking a mandamus were parties to an equity suit pending in the Supreme Court of the District of Columbia, in which that Court was adjudicating the same issues. This Court rightly held that the equity courts had acquired jurisdiction and a mandamus would not issue where the parties had a full and complete remedy in equity. In the *Knickerbocker* case, particularly, the lower Court had refused to dismiss the equity case on the motion of the Knickerbocker Insurance Company and that Company was endeavoring to use the writ of mandamus as an appeal. Here the lower Court dismissed the suits for injunction as without equity, and the appellees here were not parties litigant even in the dismissed suits.

The decision of this Court in the *Orinoco* case, *supra*, that the courts can impress with a trust *ex malificio*, funds covered into the Treasury in trust for the awardees of the Secretary of State, is in no sense in conflict with the award of the mandamus in this case. We have at no time denied that the Secretary of the Treasury could be enjoined in a proper suit from paying these moneys. The point is that no injunction has been awarded, and in its absence this Court has uniformly held that the Secretary must perform his plain statutory duty.

3. Neither The Comptroller General Nor The Plaintiffs In The Dismissed Suits For Injunction Are Necessary Parties To This Action.

This is not a *claim against the United States* which the Comptroller General is authorized to settle under the R. S. Sec. 236, 31 U. S. C. 71, nor are these "moneys of the United States" warrant for which must be "countersigned in the General Accounting Office," as required by Sec. 147, 31 U. S. C.

R. S. Sec. 236 provides for the settlement by the General Accounting Office of *all claims and demands by the United States or against it, and all accounts in which the United States is concerned as debtor or creditor*. The moneys paid to the Secretary of State by Cuba for Harrah constitute neither a *claim* nor *demand* by or against the United States, nor an *account* in which it is concerned as *debtor* or *creditor*. This statute conferred upon the General Accounting Office duty theretofore performed by the Comptroller of the Treasury, and was in force when the *Orinoco* case, *supra*, was determined. It was not suggested therein that the Comptroller General was a necessary party to the suit. 31 U. S. C., Sec. 147 is limited wholly to moneys of the United States and has no application here. The Act of February 27, 1896. specifically directs the Secretary of the Treasury to pay these funds upon the certificates of the Secretary of State, *not* upon the certificate of the Comptroller General. There is no statute authorizing the Comptroller General to issue certificates of settlement upon the certificates of settlement issued by the Secretary of State directing the Secretary of the Treasury to pay, under such settlement, moneys which have been paid by foreign governments to the Secretary of State in trust. Such an authorization would be foolish.

In any event, the Comptroller General has not refused to perform any duty required of him, and the possible (but improbable) refusal of the General Accounting Office to countersign, if necessary, any warrant issued by the Secretary of the Treasury, does not justify the latter in refusing to perform the duty imposed upon him by the Act. The Court will not assume that the Comptroller General will refuse to perform any duty which may rest upon him.

The appellants in the dismissed equity suits have been determined by a court of competent jurisdiction to have no interest in the trust fund in the Treasury for the benefit of Harrah, and that their suits are without equity. To argue that they are necessary parties here demonstrates that the appeals in those causes must be dismissed and furnish no excuse to the Secretary to refuse to perform his statutory duty. The appellees here are not parties there. If any claim is asserted to the funds certified by the Secretary of State to be paid them, they were indispensable parties there, and those appeals must be dismissed. If no claim is asserted to this particular fund, the appeals there furnish still less excuse for the appellant's refusal to act. He is impinged on either horn of the dilemma. The appellants in the equity cases had full opportunity to protect any possible interest by stay orders in those suits. They were unwilling to take this risk and protect the defendants therein, giving bond for a stay order. It is not now the duty of the *stakeholder* to prosecute as a stay order, an appeal for them, the effect of which is to cause loss and injury to the appellees declared by the Secretary of State and the courts below to be entitled to payment, and to hold up their money indefinitely without protection.

Even if there were any equity in the claims of the appellants in the equity suits, it is clear that having

permitted the appellees herein to prosecute Harrah's claim successfully without objection, and with full knowledge, they take any interest they may possibly have in the fund produced by these professional services subject to the attorneys' lien. *Svea Insurance Co. v. Parkham* (Md.) 52 L. R. A. 95-98; *Davis v. Gremmell*, 73 Md. 530, 31 Atl. 712.

Further, to the attorneys' equitable lien have been added the assignments of Harrah and the certificates of the Secretary of State directing the Secretary of the Treasury to pay the appellees the specific funds covered thereby. Thus they have drawn to their equity the legal title, and if any alleged equities of the plaintiffs in the dismissed equity suits were equal to those of the appellees, the legal title of the appellees must prevail. *Judson v. Corcoran*, 17 How. 69; see also *Salem Trust Co. v. Manufacturers Finance Co.*, 264 U. S. 182, 197.

CONCLUSION

The appeal herein should be dismissed because the appellant, not being aggrieved by the judgment below, has no right to appeal; or, in any event, the judgment below is plainly right and should be affirmed, with costs.

Respectfully Submitted,

LESLIE C. GARNETT,
JEROME SIMMONS,
Attorneys for Appellees.